

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROMEON EDMUND, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-08-0087
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§
§
METROPOLITAN TRANSIT §
AUTHORITY OF HARRIS COUNTY, TX, §
§
§
Defendant. §

MEMORANDUM AND ORDER

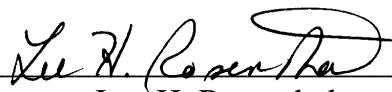
Romeo Edmund sued his former employer, the Metropolitan Transit Authority of Harris County, Texas, in Texas state court, alleging discrimination on the basis of race. Edmund's claims were based on Title VII of the Civil Rights Act of 1964. The state court petition did not include a jury demand. On January 7, 2008, Metro timely removed the case on the basis of federal-question jurisdiction and served Edmund with the notice of removal. (Docket Entry No. 1). Edmund filed a jury demand in this court on January 31, 2008. (Docket Entry No. 9). Edmund reasserted his jury demand on September 10, 2008. (Docket Entry No. 18). Federal Rule of Civil Procedure 81(c)(3) requires a plaintiff to file a jury demand within 10 days after service of the defendant's notice of removal. Metro has moved to strike the jury demand, arguing that Edmund waived his right to a jury trial by filing the demand after January 17, 2008. (Docket Entry No. 21).

Edmund's jury demand was filed 14 days after the deadline imposed by Rule 81(c)(3). "In the absence of strong and compelling reasons to the contrary, untimely jury demands [from *pro se* litigants] should be granted." *Merritt v. Faulkner*, 697 F.2d 761, 767 (7th Cir.) (trial court should have granted jury demand filed nine days after the ten-day period), *cert. denied*, 464 U.S. 986 (1983). Although Rule 38(b) imposes a time restriction on requests for trial by jury, Rule 39(b) grants the trial court wide discretion. *Id.* Untimeliness alone is not enough to deny a *pro se* litigant's fundamental right to a jury trial. *Id.* at 767, 769; *see also Lewis v. Thigpen*, 767 F.2d 252, 259 (5th Cir. 1985) (holding that *Merritt* is "consistent with this Court's favorable treatment of Rule 39(b) motions . . . [and] also consistent with the observation that '*pro se* litigants are not held to the same standards of compliance with formal or technical pleading rules applied to attorneys'") (internal citations omitted).

In this case, Edmund made clear his intent to invoke his right to a jury trial. His delay was short. His *pro se* status weighs in favor of finding no waiver.

Metro's motion to strike Edmund's jury demand is denied.

SIGNED on November 24, 2008, at Houston, Texas.



Lee H. Rosenthal
United States District Judge